

MAY 04 2018

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

UNITED STATES OF AMERICA

Case No. 5:03-cr-70006-9

v.

MEMORANDUM OPINION

JOSE BRETON-PICHARDO,  
Petitioner.

By: Hon. Michael F. Urbanski  
Chief United States District Judge

Jose Breton-Pichardo, a federal inmate proceeding pro se, filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Court records indicate that the court already dismissed (Dkt. No. 645) a prior § 2255 motion (Dkt. No. 636) by which Petitioner could have raised the instant challenge about Beckles v. United States, 137 S. Ct. 886, 890 (2017). Thus, the § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). See, e.g., Whiteside v. United States, 775 F.3d 180, 184 (4th Cir. 2014) (en banc); cf. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not shown that he obtained that certification, the § 2255 motion is dismissed without prejudice as successive. Based upon the court's finding that Petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 3rd day of May, 2018.

*/s/ Michael F. Urbanski*  
Chief United States District Judge